

Criminal Appeal NO. 151-DB of 1998

**IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

...

Dinesh Kumar and another

... Appellants

VERSUS

State of Haryana

...Respondent

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

CORAM :

HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA.

HON'BLE MR. JUSTICE MOHINDER PAL.

Present: Mr. R.S. Cheema, Senior Advocate, with
Mr.J.S.Mehndiratta, Advocate,
for the appellants.

Mr. S.S. Goripuria, Deputy Advocate General, Haryana.

-. -

MOHINDER PAL, J.

Appellants Dinesh Kumar son of Om Parkash and
Om Parkash son of Amar Nath have preferred this appeal against
the judgment of conviction dated March 03, 1998 and the
sentence order dated March 06, 1998, passed by the learned

Criminal Appeal NO. 151-DB of 1998

Additional Sessions Judge (I), Kurukshetra. Appellant Dinesh Kumar was convicted under Section 302 of the Indian Penal Code (hereinafter referred to as 'the Code') and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for two years. Appellant Om Parkash was convicted under Section 201 of the Code and sentenced to under rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default of payment of fine to undergo further rigorous imprisonment for nine months.

2. Brief facts of this case are that on September 16, 1996, at 11.10 A.M, Sham Lal went to Police Station Ladwa and got recorded his statement that his younger brother Sunil Kumar, aged 26 years (hereinafter referred to as 'the deceased') was married to Suman daughter of Om Parkash (appellant) on April 17, 1995. Earlier, Sunil Kumar was residing at Kharar and running a garment shop. Six months prior to the occurrence, he shifted to Ladwa and started running a garment shop in the name of 'Rinku Garment Store'. There was a dispute between Suman and Sunil Kumar as the latter was less literate. After starting business at Ladwa, Sunil Kumar also started residing in the house of his in-laws at Ladwa. He further stated that on September 15, 1996, at about 5 P.M, i.e a day prior to the alleged occurrence, he came to see his brother at Ladwa and accompanied him to his in-laws house. During conversation, Sunil Kumar told his brother that Surinder Madan came to his shop and threatened him that he should give divorce to Suman,

Criminal Appeal NO. 151-DB of 1998

otherwise he would be killed. Sunil Kumar further told the complainant that $\frac{3}{4}$ days prior to the occurrence, his brother-in-law Dinesh Kumar (appellant) had said that either he would commit suicide or would finish Sunil Kumar. At this, Suman and her father Om Parkash (appellant) told Dinesh Kumar that he should not commit suicide. Rather, he should do whatever he liked. Sham Lal had gone to Kurukshetra in connection with his work and while returning from Kurukshetra, he again went to the shop of his brother at Ladwa and found the shop closed. Thereafter, he went to the house of in-laws of Sunil Kumar and found that Sunil Kumar had died in a room with injuries on his head and his cot was blood-stained, He tried to enquire from the in-laws of the deceased, but they failed to give any satisfactory answer. Sham Lal, having firm belief that his brother had been murdered by Dinesh Kumar (appellant) on the asking of Suman (acquitted by the trial Court) and Om Parkash (appellant), he reported the matter to the police.

3. After completion of investigation, challan was presented against the accused.

4. Charge against accused Dinesh Kumar was framed under Section 302 of the code whereas against accused Om Parkash and Suman (since acquitted) it was framed under Section 302 read with Section 34 of the Code. They did not plead guilty to the charge and claimed trial.

5. At the trial, the prosecution examined Dr. S.N.Bansal (P.W.1), Surinder Kumar (P.W.2), Head Constable Sahab Singh (P.W.3), Constable Gurdeep Singh (P.W.4), Constable Joginder Singh (P.W.5), Sudeep Kumar (P.W.6), Vijay Kumar (P.W.7),

Criminal Appeal NO. 151-DB of 1998

Shaligram (P.W.8), Constable Sanjay Kumar (P.W.9), Sham Lal, complainant (P.W.10), Sita Ram (P.W.11), Sub Inspector Balbir Singh(P.W.12) and Kalu Ram Chaudhary (P.W.13).

6. After the closure of prosecution evidence, statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, in which they denied the prosecution allegations and pleaded innocence. Accused Dinesh Kumar further stated that there was no dispute between accused Suman (acquitted by the trial Court) and Sunil Kumar and a son was also born out of their wedlock. Sunil Kumar had participated in the Chit Fund Committee and had taken money from many committees and was not paying the same and, therefore, had shifted from Kharar to Ladwa only one and a half month prior to the occurrence. He further stated that the land abutting his house became deserted in the evening at about 8 P.M and there was no light in the street. Surinder Kumar P.W had heard an alarm from the street on the evening of September 15, 1996 at about 8-9 P.M when Surinder Kumar P.W along with P.Ws had reached the land. Surinder Kumar found Sunil Kumar in the land in an injured condition. He had come from the side of his house and had taken Sunil Kumar inside his house by holding him. He made enquiries from Sunil Kumar as to how he had sustained the injuries upon which he told him that somebody had hit him and ran away. He had sent a message on telephone about this occurrence to Sham Lal at Kharar and Chhattar Pal at Patiala. He also informed about this occurrence to Police Station, Ladwa. Accused Om Parkash adopted the statement made by accused Dinesh Kumar. Accused Suman,

Criminal Appeal NO. 151-DB of 1998

besides adopting the statement of Dinesh Kumar, also stated that there was no dispute between her and Sunil Kumar and that a son was also born to them out of the wedlock. They also examined Head Constable Lal Singh (D.1) Constable Surinder Singh (D.W.,2) and Sub Inspector Sunder Singh(D.W.3) in defence.

7. The trial Court, on consideration of the material on record, more particularly the version of the Investigating Officer to the effect that blood was seen on the walls at a height of about 7 feet from the ground level and recovery of hammer from appellant Dinesh Kumar and washed clothes from appellant Om Parkash, convicted accused Dinesh Kumar under Section 302 of the Code and accused Om Parkash under Section 201 of the Code and sentenced them, as stated in the opening para of the judgment. However, co-accused Suman was acquitted.

8. We have heard the learned counsel for the parties and have gone through the records of the case.

9. While arguing before us, it has been contended by the learned counsel for the appellants that the learned trial Judge has committed an error by convicting Dinesh Kumar (appellant) simply on the ground that blood had been seen on the walls at certain height and that no blood had been lifted from the street where occurrence had taken place. It was further argued that Om Parkash, father-in-law of the deceased, has been involved in this case on the ground that he tried to destroy the evidence by washing the clothes of the deceased. He further argued that the recovery of hammer from Dinesh Kumar (appellant) allegedly on the basis of his disclosure statement is also an afterthought.

Criminal Appeal NO. 151-DB of 1998

10. On the other hand, learned Public Prosecutor reiterated the stand taken in the trial Court, and requested for upholding the judgment of the trial Court.

11. The machinery of the prosecution was set into motion on the basis of statement of P.W.10 Sham Lal, brother of the deceased. The visit of this witness to his brother a day prior to the date of occurrence and his evidence regarding strained relations between Sunil Kumar and Suman has been disbelieved by the trial Court for the reason that had there been strained relations between the husband and wife, they would not have lived together at their matrimonial home at Kharar or Suman would have come to her parental home leaving her husband at Kharar. To the contrary, there is evidence on file according to which both husband and wife shifted to Ladwa and started a new business of garments in the name of Tinku Garment Store. Tinku is none else but nick-name of accused Dinesh Kumar, brother-in-law of the deceased. Sunil Kumar was residing in the house of his in-laws. These facts have been corroborated by the statement of Surinder Kumar (P.W.2). The trial Court disbelieved the evidence of P.W.10 Sham Lal, which further proves that there was no dispute between husband and wife before the occurrence. No dispute can be found with the judgment of the trial Court to the effect that the parties were living peacefully prior to the occurrence.

12. Now, after excluding the evidence of P.W.10 Sham Lal, the other important evidence on the file is in the form of P.W.13 Assistant Sub Inspector Kalu Ram Chaudhary, who recorded the statements of the witnesses and visited the spot. He also directed

Criminal Appeal NO. 151-DB of 1998

the Photographer to take photographs of the dead body of Sunil Kumar, which are Exhibits P.4 to P.7. He prepared inquest report (Exhibit P.B). This witness lifted blood from the floor, which was oozing out from the head of the deceased and took the same into possession after sealing it into a parcel. He also took into possession various articles including `Gadha, Exhibit P.13, blanket, Exhibit P.14, two pillow covers, Exhibits P.16 and P.17, one empty gunny bag Exhibit P.18 and one shirt Exhibit P.19 from the spot. On September 17, 1996, at about 9.15 A.M, he interrogated accused Dinesh Kumar and in pursuance of his disclosure statement Exhibit P.N, allegedly recovered blood-stained hammer Exhibit P.3, which he had kept concealed near the bushes near the Bus Stand of Village Ladhi Dhanaura. Similarly, he interrogated accused Om Parkash and in pursuance of his disclosure statement Exhibit P.O recovered clothes of accused Dinesh Kumar, which had been washed after the occurrence.

13. The findings recorded by the trial Court on the basis of evidence of P.W.13 Assistant Sub Inspector Kalu Ram Chaudhary are erroneous. The trial Court has come to the conclusion that the occurrence had taken place inside the house and not outside in the street as pleaded in the defence version. This inference has been drawn on the basis of statement of the Investigating Officer and the scaled site plan (Exhibit P.G) where blood-stained marks have been shown on the walls of the room where the deceased was found murdered as per the prosecution. The trial Court disbelieved the defence version simply on the ground that no blood-stained earth had been lifted from the street

Criminal Appeal NO. 151-DB of 1998

and that no one from the public had seen the assailants causing injuries to Sunil Kumar, as pleaded in the statements of the accused under Section 313 of the Code of Criminal Procedure. The trial Court also gave weight to the recovery of blood-stained hammer on the basis of disclosure statement of accused Dinesh Kumar and the recovery of clothes in pursuance of the disclosure statement of accused Om Parkash, which were allegedly washed in order to destroy the evidence. These findings of the trial Court are liable to be reversed for the reason that the Investigating Officer prepared a rough site plan Exhibit P.P immediately after the occurrence wherein blood-stained walls etc. are not shown. A small sketch of the place of occurrence had also been prepared on the inquest report and in this document also, the walls having blood-stains are missing. It has come in the evidence that apart from Dinesh Kumar and Om Parkash, some other persons were also present in the house. Even if the version of the prosecution, as upheld by the trial Court, is believed that the occurrence had taken place within the four walls of the house, it is difficult to pin-point who caused injuries on the head of the deceased. Though evidence of P.W.10 Sham Lal has been disbelieved by the trial Court, however, he has stated in many words that apart from the accused in this case, a number of other persons, namely, Aditya son of Om Parkash, his two daughters and his wife were also residing in the same house. So, in a case where so many persons are residing in the house, to say that only Dinesh Kumar had caused injuries on the head of the deceased is a doubtful proposition.

Criminal Appeal NO. 151-DB of 1998

14. Further more, the findings of the trial Court centred around the point that Suman wife of the deceased was not having good relations with the deceased and in absence of her conviction by the trial Court, the other two accused, namely, Dinesh Kumar (appellant), brother of Suman and Om Parkash, father of Suman, cannot be held guilty in this case.

15. For the reasons recorded above, this appeal filed by appellant Dinesh Kumar and Om Parkash is allowed as there is no clinching evidence against them and they are acquitted of the charges framed against them by setting aside the impugned judgment and the sentence order passed by the learned Additional Sessions Judge (I), Kurukshetra.

(ASHUTOSH MOHUNTA)
JUDGE

(MOHINDER PAL)
JUDGE

November 21, 2007.
ak